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No. 95-355

IN THE
Supreme Court of the United States
OCTOBER TERM, 1995

KATHLEEN MCKOWN, WILLIAM MCKOWN, MARIO TOSTO, and QUINNA LAMB,
Petitioners,
v.
DOUGLASS G. LUNDMAN, as trustee for the next of kin of IAN DOUGLASS LUNDMAN, deceased,
Respondent.

On Petition for a Writ of Certiorari to the Minnesota Court of Appeals

MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE AND BRIEF AMICI CURIAE OF THE ARCHDIOCESE OF ST. PAUL AND MINNEAPOLIS, THE BAPTIST JOINT COMMITTEE ON PUBLIC AFFAIRS, THE CHRISTIAN CHURCH (DISCIPLES OF CHRIST), THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, THE CHURCH OF THE NAZARENE, THE NATIONAL ASSOCIATION OF EVANGELICALS, THE REORGANIZED CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS, THE GENERAL CONFERENCE OF SEVENTH-DAY ADVENTISTS, AND THE WORLDWIDE CHURCH OF GOD IN SUPPORT OF PETITIONERS

KARL L. CAMBRONNE
Counsel of Record
CHESTNUT & BROOKS, P.A.
3700 Piper Jaffray Tower
222 South Ninth Street
Minneapolis, Minnesota 55401
Attorneys for Amici Curiae

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MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE

Amici are American churches and church associations that together represent more than 45 million people. *Amici* come from every region in America and represent a broad spectrum of this country's religions. They wish to submit the attached brief in support of petitioners' contention that the judgment against them, affirmed by the Minnesota Court of Appeals, should be reversed. The petitioners have given their written consent to the filing of this brief pursuant to Rule 37.2 of the Rules of this Court. The consent of the respondent was requested but refused. That refusal, for which the respondent has given no explanation, is the cause of this Motion.

INTERESTS OF THE AMICI CURIAE

The nine *amici* are:

1. The Archdiocese of St. Paul and Minneapolis represents 690,000 Roman Catholics and 223 parishes in and around the Twin Cities. The Archdiocese is a part of The Roman Catholic Church, the largest religious denomination in the United States, with 59 million members in 20,000 parishes throughout the country. The preservation of religious liberty, through the proper interpretation of the First Amendment, is an important and historic value of the Archdiocese.

2. The Baptist Joint Committee on Public Affairs is composed of representatives from various national cooperating Baptist conventions and conferences in the United States, which together represent some ten million members. It deals exclusively with issues pertaining to religious liberty and church-state separation and believes that vigorous enforcement of both Establishment and Free Exercise Clauses is essential to religious liberty for all Americans. The Baptist Joint Committee's supporting bodies include: Alliance of Baptists; American Baptist Churches in the U.S.A.; Baptist General Conference; Cooperative Baptist Fellowship; National Baptist Convention of America; National Baptist Convention, U.S.A., Inc.; National Missionary Baptist Convention; National American Baptist Conference; Progressive National Baptist Convention, Inc.; Religious Liberty Council; Seventh Day Baptist General Conference; and Southern Baptists through various state conventions and churches. Because of the congregational autonomy of individual Baptist churches, the Baptist Joint Committee does not purport to speak for all Baptists.

3. The Christian Church (Disciples of Christ) is an American born church of over one million members and four thousand congregations. It has a long history of support for freedom of religious expression. From its beginning in Western Pennsylvania in 1803, it has op-

posed religious intolerance and worked for religious freedom without government interference.

4. The Church of Jesus Christ of Latter-day Saints is an unincorporated religious association headquartered in Salt Lake City, Utah. Church membership exceeds nine million with more than 17,000 congregations located throughout the world. Firmly embedded in the tradition and teachings of the LDS Church are the concepts of religious freedom and toleration: "We claim the privilege of worshipping almighty God according to the dictates of our own conscience and allow all men the same privilege, let them worship how, where, or what they may." Article of Faith, No. 11.

5. The Church of the Nazarene is international in scope with more than 1.1 million members and 10,000 local churches worldwide. It has about five thousand local churches and 600,000 members in the United States. It was founded in 1895 and joined with other denominations in 1907 to form its present general structure. The Church is strongly committed to and supports religious freedom.

6. The National Association of Evangelicals is a nonprofit association of evangelical Christian denominations, churches, organizations, institutions and individuals. It includes some 50,000 churches from 74 denominations and serves a constituency of approximately 15 million people. NAE is committed to defending religious freedom, including the right of churches to conduct their mission without government interference, as a precious gift of God and a vital component of the American heritage.

7. The Reorganized Church of Jesus Christ of Latter Day Saints (RLDS) is an unincorporated religious association headquartered in Independence, Missouri. Church membership exceeds 250,000 with more than 1,253 congregations located throughout the world. The RLDS

Church has, since its inception, supported the exercise of religious freedom and remains committed to the principles of religious liberty as guaranteed by the First Amendment of the Constitution.

8. The General Conference of Seventh-day Adventists is the highest administrative level of the Seventh-day Adventist Church, which has more than eight million members worldwide. It represents more than 4,000 congregations in the United States. The Church also has one college, two health care institutions, and fourteen elementary and secondary schools in the state. The North American Division of the Church strongly supports religious freedom through the bimonthly publication of Liberty magazine.

9. The Worldwide Church of God, headquartered in Pasadena, California, has approximately 880 congregations and 100,000 members and co-workers. It has a strong interest in issues of religious freedom.

The churches and church organizations listed above hereby respectfully move this Court for leave to file the attached brief *amici curiae* in this case. The consent of the petitioners has been obtained. The consent of the respondent was requested but refused.

The interest of the *amici*, who represent a significant segment of American churches, arises from the applicability to each such church (and its members and clergy) of the unconstitutional standard of tort liability that appears to have been announced by the court below. The Minnesota Court of Appeals has purported to create a tort of malpractice based upon the allegedly negligent or unreasonable performance of religious functions. The First Amendment does not permit such a cause of action.

Although the question presented in the petition for writ of certiorari arises in the context of Christian Science practice, the *amici* are in a position to advise this Court of its implications for other religions, and particularly for

those of the *amici* themselves. No current party to this case has both the interest and the ability to present such implications to the Court. Accordingly, although a motion such as this is "not favored," Sup. Ct. R. 37, *amici* urge that it be granted, having been given no reason by the respondent for withholding consent.

Respectfully submitted,

KARL L. CAMBRONNE
Counsel of Record
CHESTNUT & BROOKS, P.A.
3700 Piper Jaffray Tower
222 South Ninth Street
Minneapolis, Minnesota 55401

Attorneys for Amici Curiae

QUESTION PRESENTED

Whether liability may be imposed on a clergyman for allegedly negligent or unreasonable performance of his religious function.

STATEMENT PURSUANT TO RULE 29.1

Amici have no parent companies and no subsidiaries that are not wholly-owned.

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BRIEF *AMICI CURIAE* OF ARCHDIOCESE OF ST. PAUL & MINNEAPOLIS, *ET AL.*, IN SUPPORT OF PETITIONERS

INTERESTS OF THE AMICI CURIAE

The interests of the *amici curiae* are detailed in the accompanying Motion.

STATEMENT

Amici adopt the statement of the case set forth in the petition for certiorari and wish simply to underscore the following:

The judgment below imposed liability of $1.5 million on two parents and two Christian Science caregivers who had attended to a child who died. The judgment was affirmed despite the unquestioned good faith and sin-

cerity of each person's belief, founded in religious faith, that Christian Science spiritual care was best for the child. The *amici*, representing a large segment of American churches, do not all necessarily agree with the doctrines or practices of any particular religion. They do not, for example, necessarily share with the petitioners the belief that one should rely solely upon prayer and spiritual healing to cure illness. The *amici* do, however, defend the right of Christian Scientists to embrace religious beliefs and practices freely and without undue governmental restraint. And the *amici* are in a position, as petitioners alone are not, to attest to the potential impact of the unconstitutional rulings in this case upon religions other than Christian Science.

Amici do not argue that people should be free to engage in tortious acts without encountering consequences for their behavior. But they do contend that the standard for assessing tort liability announced and enforced by the Minnesota Court of Appeals unconstitutionally interprets religious doctrine, unnecessarily impairs those who practice what Christian Science teaches, and threatens the clergy and adherents of all religions in their First Amendment freedoms.

ARGUMENT IN SUPPORT OF CERTIORARI

The *McKown* petitioners urge, as one basis for granting certiorari, that the standard of tort liability adopted by the Minnesota Court of Appeals violates the First Amendment because it requires courts to determine whether, in caring for a sick child, an adherent of Christian Science acted as a "reasonable Christian Scientist." Pet. App. at 15, 22-24. Such a determination necessarily involves courts and juries in the unconstitutional business of interpreting religious doctrine and regulating spiritual work on the basis of those judicial interpretations.

Petitioners justifiably contend that imposition of the "reasonable Christian Scientist" standard is one of the

reasons why, in view of the existence of reporting statutes, after-the-fact tort liability is not the least restrictive alternative to achieve Minnesota's compelling interest in protecting the lives of its children. Pet. at 15. Wholly apart from the reporting alternative, however, petitioners also contend that it was unconstitutional to impose that standard upon petitioner Tosto, whose job was to treat Ian Lundman with spiritual care through prayer—a job recognized as a clergyman's under Minnesota law. "It is no business of secular courts to regulate the way Christian Science practitioners conduct their spiritual work." Pet. at 24.

Amici urge that the standard imposed by the Minnesota Court of Appeals is unconstitutional, not only as imposed upon practitioner Tosto, but as imposed upon the other Christian Scientist petitioners as well. Imposition of that standard unconstitutionally invents a novel tort—the purported tort of "clergy" or "religion" malpractice. Such a development directly conflicts with established Supreme Court precedent that prohibits civil courts from interpreting religious doctrine and then imposing tort liability for alleged deviations from their interpretations.

I. THE FIRST AMENDMENT PROHIBITS CIVIL COURTS FROM INTERPRETING RELIGIOUS DOCTRINE AND IMPOSING LIABILITY FOR DEVIATIONS FROM THEIR INTERPRETATIONS.

The lower court held that "the undisputed facts demonstrate as a matter of law that appellants breached the standard of care of a *reasonable* Christian Scientist, a standard that on these facts required a turn to conventional medicine." Pet. App. 51a (emphasis original). In reaching this holding, the lower court formed and relied on a judgment about the proper interpretation of Christian Science doctrine and about what a "reasonable Christian Scientist" would do in light of it. The lower court essentially told the petitioners—life-long adherents

and participants in Christian Science—that they got their own religion wrong. That sort of judgment violates the First Amendment, as this Court has held without qualification.

The First Amendment precludes civil courts from determining the proper interpretation of religious doctrine. This Court has said so in a phalanx of cases. "[I]t is not within the judicial function and judicial competence to inquire whether the petitioner or his fellow worker more correctly perceived the commands of their common faith. Courts are not arbiters of scriptural interpretation." *Thomas* v. *Review Board,* 450 U.S. 707, 716 (1981). Civil courts may not determine "whether [a believer] or the Government has the proper interpretation" of a religious faith. *United States* v. *Lee,* 455 U.S. 252, 257 (1982). "[T]he First Amendment forbids civil courts" from determining "matters at the very core of a religion —the interpretation of particular church doctrines and the importance of those doctrines to the religion." *Presbyterian Church* v. *Hull Church,* 393 U.S. 440, 450 (1969). Civil courts "exercise no jurisdiction" over "strictly and purely ecclesiastical" matters, including "the conformity of the members of the church to the standard of morals required of them." *Serbian Eastern Orthodox Diocese* v. *Milivojevich,* 426 U.S. 696, 713-14 (1976) (emphasis removed) (quoting *Watson* v. *Jones,* 13 Wall. 679, 733-34 (1872)).

In *Thomas,* this Court reviewed Indiana's denial of a request for unemployment compensation. Thomas, a Jehovah's Witness, had refused a job transfer to a department that made tank turrets, because, he said, his religion prohibited him from participating in the production of weapons. In rejecting Thomas's request, the lower court gave "significant weight to the fact that another Jehovah's Witness had no scruples about working on tank turrets." 450 U.S. at 715. This Court held that civil courts could not inquire whether Thomas or his coreligionist "more

correctly perceived the commands of their common faith." *Id.* at 716. Civil courts simply cannot decide the meaning of religious doctrines; they can only decide whether the religious act with "an honest conviction." *Id.* at 716.

In the *Presbyterian Church* case, this Court reversed the lower court's determination, made as part of its effort to resolve a property dispute, that local churches of the Presbyterian Church had departed from the Church's religious doctrine. The "departure-from-doctrine" test, said this Court, "can play *no* role in any future judicial proceedings." 393 U.S. at 450 (emphasis original). To determine that a local church had departed from its church's doctrine "would require the civil courts to engage in the forbidden process of interpreting and weighing church doctrine." *Id.* at 451.

Despite these clear precedents, the lower court in petitioners' case embraced what amounts to a version of the unconstitutional "departure-from-doctrine" approach. To determine that a "reasonable Christian Scientist" sometimes would abandon spiritual healing, the lower court expressly interpreted Christian Science doctrine: "one Christian Science manual," the lower court said, "can be read to imply that situations may arise where medical treatment may be required." Pet. App. 36a.[1] The lower court thus interpreted a church manual to establish two propositions: first, that "reasonable Christian Scientists" sometimes abandon the core doctrine of their faith and seek medical treatment; and second, that the petitioners

[1] The principle that the interpretation of Church documents must be left solely to Church authorities is well-settled. In *Milivojevich, supra,* 426 U.S. 696, the question before the Court was whether certain church authorities had acted in accord with procedures specified in the church's constitution. The Supreme Court held that a judicial resolution of that question was impermissible under the First and Fourteenth Amendments because courts may not employ their own interpretation of canonical documents, however straightforward that interpretation appears to be. *Id.* at 721.

were unreasonable as Christian Scientists in not doing so. Whether the lower court properly interpreted Christian Science—and petitioners strongly contend it did not—the First Amendment prohibits civil courts from engaging in such interpretations.

Minnesota's courts stand alone in allowing such an inquiry.[2] The purported tort of "clergy malpractice" has been rejected, for example, by the Supreme Courts of California, Nebraska, Hawaii, Oklahoma, Colorado and Alabama. See *Nally* v. *Grace Community Church*, 763 P.2d 948, 953 (Cal. 1988), *cert. denied*, 490 U.S. 1007 (1989); *Schieffer* v. *Catholic Archdiocese*, 508 N.W. 2d 907, 912 (Neb. 1993); *O'Connor* v. *Diocese*, 885 P.2d 361 (Haw. 1994); *Bladen* v. *First Presbyterian Church*, 857 P.2d 789 (Okla. 1993); *Destefano* v. *Grabrian*, 763 P.2d 275 (Colo. 1988); *Handley* v. *Richards*, 518 So. 2d 682 (Ala. 1987). See also *Dausch* v. *Rykse*, 52 F.3d 1425 (7th Cir. 1994) (rejecting claim of clergy malpractice under Illinois law). In a case akin to this one, the Supreme Court of Hawaii rejected a claim that a Catholic Bishop had violated his "duty to adhere to the standards of ecclestiastical care of a Christian Bishop of the Roman Catholic Church," holding that the adjudication of such a claim would require civil courts:

> to dive into the murky waters of doctrinal purity, church definitions of priestly duties, and church notions of proper church administration. Again, like the other claims, this claim cannot be resolved 'without extensive inquiry . . . into religious law and polity,' and civil courts cannot make such inquiry.

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[2] When, as here, the Minnesota Supreme Court declines review of a published decision of the Minnesota Court of Appeals, that decision becomes binding precedent throughout Minnesota, because the Court of Appeals' jurisdiction encompasses the entire State. This Court often has granted certiorari to review the decisions of intermediate state appellate courts, where the State's court of last resort has declined such review, to consider substantial constitutional issues implicating the First Amendment. See, *e.g.*, *Fort Wayne Books, Inc.* v. *Indiana*, 489 U.S. 46, 53 (1989).

O'Connor, 885 P. 2d at 369 (quoting *Milivojevich*, 426 U.S. at 709).

The Supreme Court of Nebraska similarly rejected a claim of "clergy malpractice," because of the "constitutional difficulties" it would engender. *Schieffer*, 508 N.W. 2d at 912. In so concluding, the Nebraska Supreme Court expressly relied on *Schmidt* v. *Bishop*, 779 F. Supp. 321, 328 (S.D.N.Y. 1991), which held that it would be unconstitutional under the First Amendment "to define and express the standard of care to be followed by other reasonable Presbyterian clergy of the community."

Finally, in *Baumgartner* v. *First Church of Christ, Scientist*, 490 N.E.2d 1319, 1323 (Ill. App. Ct. 1986), *cert. denied*, 479 U.S. 915 (1986), the Illinois appellate court considered whether a practitioner "deviated from the standard of care of an ordinary Christian Science practitioner." The Court held that such a claim was not constitutionally justiciable because "the only entity with the authority and power to determine whether there has been a deviation from 'true' Christian Science practice is the Christian Science Church itself." *Id.*[3] See *Pfeifer* v. *Christian Science Comm. On Publications*, 334 N.E.2d 876, 880 (Ill. App. Ct. 1975) (dismissing Christian Science malpractice claim because the "case depends on the resolution of the factual question of whether [practitioner's] teachings deviated from the principles of Mary Baker Eddy.").

Minnesota stands alone in adopting the purported tort of religion malpractice, which requires civil courts to interpret church doctrine to determine if an adherent has

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[3] The court also examined common law negligence claims against the practitioner, which alleged that he "failed to withdraw . . . [or] to consult a medical doctor when they knew or should have known Christian Science treatment was not curing decedent's illness." 490 N.E.2d at 1325. The First Amendment precluded this claim, which "would require a searching inquiry into Christian Science beliefs and the validity of such beliefs." *Id.*

violated the tenets of his own religion. The lower court decision creating this tort is manifestly contrary to the teachings of this Court and, unless reversed, is a threat to freedom in the practice of all religions.

CONCLUSION

For the reasons stated herein and in the petition, certiorari should be granted.

Respectfully submitted,

KARL L. CAMBRONNE
Counsel of Record
CHESTNUT & BROOKS, P.A.
3700 Piper Jaffray Tower
222 South Ninth Street
Minneapolis, Minnesota 55401
Attorneys for Amici Curiae